

FILED OCTOBER 9, 2008

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 08-N-10959
)	
ROBERT ALLEN MARTIN)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 62018)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default disciplinary matter, respondent Robert Allen Martin (respondent) is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20, as ordered by the California Supreme Court on September 28, 2007, in S154924 (State Bar Court Case No. 05-O-04152).

The court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served via certified mail, return receipt requested, on respondent at his official membership records address on May 7, 2008. The mailing was not returned.

Efforts to contact or locate respondent, both by telephone and through an internet-based directory assistance website, were unsuccessful. On motion of the State Bar, respondent's

default was entered on July 8, 2008. A copy of the order of entry of default was properly mailed to respondent's official membership records address. The mailing was not returned as undeliverable, or for any other reason. Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e)¹ on July 11, 2008.

Respondent never filed a response to the NDC (Rules Proc. of State Bar, rule 103) and did not participate in the disciplinary proceedings. The court took this matter under submission on July 28, 2008, following the filing of the State Bar's brief on culpability and discipline which requested waiver of a hearing in this matter.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 18, 1974, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. Violation of California Rules of Court, Rule 9.20

On September 28, 2007, the California Supreme Court filed an order in case number S154924 (State Bar Court Case Number 05-O-04152).

The September 28, 2007 order required respondent to comply with California Rules of Court, rule 9.20 (rule 9.20), and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the order.

¹ All references to section(s) are to the Business and Professions Code, unless otherwise indicated.

Notice of this order was duly and properly served on respondent in the manner prescribed by California Rules of Court, rule 8.532, at respondent's address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1.

The September 28, 2007 order became effective on or about October 28, 2007, and at all times thereafter remained in full force and effect.

The deadline for respondent to comply with rule 9.20, subdivision (c), expired on or about December 7, 2007. Respondent failed to comply with rule 9.20, subdivision (c), prior to the December 7, 2007² deadline. As of May 7, 2008, respondent still had not complied with rule 9.20, subdivision (c).³

Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. "Willfulness" in the context of rule 9.20 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341 [referring to the rule by its previous number designation, rule 955].)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, subdivision (c), as ordered by the Supreme Court.⁴

² The NDC lists this date as "December 7, 2008." The Supreme Court's order attached to the NDC clearly demonstrates that this was a typographical error.

³ There is no indication that respondent has since complied.

⁴ The concluding paragraph in the NDC refers to a "September 28, 2008 order." The Supreme Court's order attached to the NDC demonstrates that this is another typographical error and that the NDC should instead have referred to the "September 28, 2007 order." Because this is clearly a typographical error, the court finds that respondent was provided with adequate notice of the present charge.

C. Violation of Business and Professions Code Section 6103

Respondent's willful failure to comply with rule 9.20, subdivision (c), constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received, and none can be gleaned from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁵

B. Aggravation

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has three prior impositions of discipline.

Effective March 8, 1988, respondent was privately reprovved with conditions in State Bar Court Case No. 87-I-50 SF for abandoning his client, failing to use reasonable diligence, failing to promptly deliver papers and property to which the client was entitled, failing to communicate, and violating his oath and duties as an attorney. In mitigation, respondent had no prior record of discipline, he was candid and cooperative with the State Bar, and he was undergoing emotional stress related to domestic problems at the time of the misconduct. No aggravating factors were involved.

On May 30, 1990, the California Supreme Court issued an order (S014281) suspending respondent from the practice of law for six months, stayed, with a probationary period of one year for failing to comply with a condition of his private reproof. In mitigation, respondent was

⁵ All further references to standard(s) are to this source.

candid and cooperative with the State Bar and demonstrated remorse. In aggravation, respondent had a prior record of discipline.

On September 28, 2007, the California Supreme Court, in the underlying matter, issued an order (S154924) suspending respondent from the practice of law for 18 months, stayed, with two years probation, and one year actual suspension. Respondent stipulated to failing to perform legal services with competence, failing to refund unearned fees, and failing to keep his client reasonably informed of significant developments. In mitigation, respondent cooperated with the State Bar and was suffering from physical difficulties related to his lung cancer. In aggravation, respondent had a prior record of discipline.

V. Discussion

Respondent's willful failure to comply with rule 9.20, subdivision (c), is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

Furthermore, standard 1.7(b) provides that if an attorney is found culpable of misconduct in any proceeding and the member has a record of two prior impositions of discipline, the degree of discipline to be imposed in the current proceeding must be disbarment, unless the most compelling mitigating circumstances clearly predominate. In this matter, respondent has a record of three prior impositions of discipline, and no mitigating circumstances were found.

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given opportunities to do so. Therefore, his disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public

confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his willful disobedience of an order of the California Supreme Court.

VI. Recommended Discipline

The court recommends that respondent Robert Allen Martin be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, after the effective date of its order imposing discipline in this matter.⁶

VII. Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in section 6140.7 and as a money judgment.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar of California. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: March ____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court

⁶ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar*, *supra*, 44 Cal.3d at p. 341.)